

**Applicant: Dick et al.
Application No.: 10/688,223**

REMARKS/ARGUMENTS

After the foregoing Amendment, claims 39 – 44 are pending in this application.

Claim Rejections - 35 USC §103

Claims 39 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over PCT Publication No. WO02/065667 to Willenegger et al. (hereinafter Willenegger) in view of U.S. Patent No. 6,400,960 to Dominique et al. (hereinafter Dominique) and further in view of U.S. Patent No. 6,711,150 to Vanghi (hereinafter Vanghi).

The Examiner is improperly using Applicant's disclosed method and apparatus as the basis of his obviousness rejection. As Applicant has previously argued, and the Examiner admitted, Willenegger does not disclose the method and WTRU as claimed in claims 39 and 42. In the Examiner's previous September 27, 2007 Office Action, the Examiner has stated that the base station is read as a network unit. Now, based on Applicant's previous arguments, the Examiner is now indicating that the base station is read as a WTRU, as well as the use of the terminals. There is nothing, though, in Willenegger to support the Examiner's assumption that the network unit is equivalent to a WTRU nor has the Examiner

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cited such support. Accordingly, it is clear that the Examiner is basing the obviousness of Applicant's disclosed serving WTRU to determine what is obvious.

Further, Dominique does not disclose the shared channel target metric generator that is claimed by Applicants. Dominique discloses a method that helps to prevent a communication channel that can operate in DTX mode from entering into a deadlock state. According to Dominique, when it is determined that the communication channel is in DTX mode, an updated power threshold for the communication channel is calculated. It appears, therefore, that the Examiner believes that the shared channel target metric generator is inherent because an updated power threshold for the communication channel is calculated in Dominique. It is clear though, that although the Examiner believes that Dominique is in a related field endeavor, there is no suggestion or teaching in either Dominique nor Willenegger to combine a system related to providing a method for preventing a communication channel from entering a deadlock state that can operate in DTX, as in Dominique, with a system that discloses various power control techniques provided to support independent power controls of multiple channels to achieve the desired level of performance, while reducing interference and maximizing system capacity, as disclosed in Willenegger.

Again, it is adamant that the Examiner is using Applicant's disclosed method as a basis of his finding of obviousness. The Examiner's citation of Vanghi is

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further proof of the Examiner's improper use of Applicant's disclosed WTRU. As the Examiner indicates, Vanghi has been cited for disclosing using the target SNR in computing uplink channel power increase or decrease. Vanghi, though, does not disclose the elements that are not present in Willenegger and Dominique. Accordingly, neither Willenegger, Dominique nor Vanghi, alone or in combination with one another, suggest or teach the method disclosed in claims 39 and 42. Therefore, Applicant's disclosed method and WTRU are not obvious over Willenegger in view of Dominique and further in view of Vanghi.

Claims 40, 41, 43 and 44 are dependent upon claims 39 and 42, and the Applicants believe these claims are allowable over the cited references of record for the same reasons provided above.

Based on the arguments presented above, withdrawal of the §103 rejection of claims 39 and 42 is respectfully requested.

Conclusion

If the Examiner believes that any additional minor formal matters need to be addressed in order to place this application in condition for allowance, or that a telephonic interview will help to materially advance the prosecution of this application, the Examiner is invited to contact the undersigned by telephone at the Examiner's convenience.

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In view of the foregoing amendment and remarks, Applicants respectfully submit that the present application is in condition for allowance and a notice to that effect is respectfully requested.

Respectfully submitted,

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DWS/rlm
Enclosure